



This document is scheduled to be published in the Federal Register on 05/19/2016 and available online at <http://federalregister.gov/a/2016-11806>, and on FDsys.gov

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 7

[Docket No. FR-5645-F-01]
RIN 2501-AD78

Removal of the Equal Employment Opportunity; Policy, Procedures and Programs Regulation

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: To increase the effectiveness of its Equal Employment Opportunity (EEO) program and streamline HUD's regulations, HUD has decided to remove 24 CFR part 7 (HUD's EEO regulation), while continuing to publish its EEO policy and procedures as administrative guidance. This action is necessary because HUD's EEO regulation has been superseded by the Equal Employment Opportunity Commission (EEOC) regulation at 29 CFR part 1614 (EEOC's regulation) and therefore does not establish binding requirements. In addition, HUD's EEO regulation was intended to conform to and mirror EEOC's regulation. As EEOC's regulation has been revised, HUD's EEO regulation has become outdated and may create confusion for parties having to reconcile differing HUD and EEOC regulations. By consolidating its EEO policy and procedures in administrative guidance, HUD can more effectively incorporate amendments to EEOC's regulation, highlight HUD-specific guidance, and simplify the procedures for parties seeking to exercise their EEO rights.

DATES: Effective: **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE
FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: John P. Benison, Director, Office of Departmental Equal Employment Opportunity, Department of Housing and Urban Development,

451 7th Street, SW, Room 2102, Washington, DC 20410; telephone number 202-708-3362 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the Federal Relay Service at 800-877-8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

HUD policy is to provide equality of employment opportunity for all persons, and to prohibit discrimination because of race, color, religion, sex (including gender identity, sexual orientation, and pregnancy), national origin, age, disability, or genetic information in all facets of employment. These policies are integral to HUD's mission and underlie its efforts to promote economic and community development; increase homeownership; create affordable housing opportunities for low-income Americans; enforce the Nation's fair housing laws; and support the homeless, the elderly, people with disabilities, and people living with AIDS. Toward this goal, HUD remains committed to promoting affirmative employment through the removal of barriers and by positive actions at every management level, including the early resolution of EEO disputes.

To increase the effectiveness of HUD's EEO program and streamline HUD's regulations, HUD has decided to consolidate its EEO policy and procedure, currently codified in HUD's EEO regulation at 24 CFR part 7, in administrative guidance that is already posted on HUD's website. This action is necessary because HUD's EEO regulation has been superseded by EEOC regulation, and, as such, does not establish binding requirements. In addition, this action allows HUD to ensure that its EEO policy and procedures are accurate and up-to-date.

HUD's EEO regulation was promulgated on April 23, 2001 (66 FR 20564). When published, the rule was intended to mirror and conform to EEOC's "Federal Sector Equal

Employment Opportunity” regulation at 29 CFR part 1614. Since promulgation of HUD’s EEO Regulation, EEOC’s regulation at 29 CFR part 1614 was revised several times: on May 21, 2002, to implement the amendment of section 501 of the Rehabilitation Act, under the Rehabilitation Act Amendments of 1992; on August 2, 2006, to address the posting requirements of the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (71 FR 43644); on December 7, 2009, to include references to title II of the Genetic Information Nondiscrimination Act of 2008 (74 FR 63981); on July 25, 2012, to reform the Federal sector EEO complaint process (77 FR 43498); and on various other dates to implement clerical or procedural changes. As a result, HUD’s EEO Regulation no longer mirrors EEOC’s regulation and is now outdated. HUD is concerned that this may result in confusion for parties required to reconcile HUD’s EEO regulation and EEOC’s regulation. Further, the provisions of HUD’s EEO regulation that expand on EEOC’s regulation may add further confusion by adding procedures that apply only to HUD and not to those employees or applicants seeking information about Federal equal employment opportunity policies, procedures, and programs.

To remedy this situation, HUD is removing 24 CFR part 7. By removing HUD’s EEO regulation and consolidating all of HUD’s EEO policy and procedures in administrative guidance, HUD can more effectively incorporate amendments to EEOC’s regulation, highlight HUD specific guidance, and simplify the procedures for parties seeking to exercise their EEO rights.

HUD consulted with the EEOC in development of this final rule, consistent with “Executive Order 12067—Providing for Coordination of Federal Equal Employment Opportunity programs” (43 FR 28967). Executive Order 12067 requires that “agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the

development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity.”

II. Justification for Final Rulemaking

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10 provides for exceptions to the general rule if the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is “impracticable, unnecessary, or contrary to the public interest” (24 CFR 10.1; *see also* 5 U.S.C. 553(b)). HUD finds that public notice and comment are unnecessary for this rulemaking because HUD’s EEO regulation is obsolete and unnecessary, and, as such, its removal does not establish or affect substantive policy. HUD’s EEO regulation was initially promulgated to mirror and conform to EEOC’s regulation, but was later effectively superseded as EEOC revised its regulations. For the sake of accuracy and flexibility, HUD will address in administrative guidance, rather than in the Code of Federal Regulations, any future changes to its internal EEO policy and procedures. Additionally, this will eliminate confusion resulting from having two regulations that address the same EEO laws yet differ in currency and scope.

For these reasons, HUD has determined that it is unnecessary to delay the effectiveness of this rule in order to solicit prior public comment.

III. Findings and Certification

Regulatory Review – Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive

Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are “outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.

Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

Since this final rule covers internal HUD operations and pertains only to current/former employees and applicants for employment at HUD, it is not subject to review under Executive Order 12866. As discussed in this preamble, the final rule would amend HUD’s personnel regulations by removing HUD’s EEO regulation that, when issued, was established to conform to the EEOC’s regulation but is now outdated. HUD is consolidating its EEO policy and guidance in administrative guidance, allowing HUD more flexibility to effectively incorporate amendments to EEOC’s regulation and simplify procedures for parties seeking to exercise their EEO rights. This final rule is, nevertheless, consistent with the goals of Executive Order 13563, to reduce regulatory burdens and maintain maximum agency flexibility.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because HUD has determined that good cause exists to issue this rule without prior public comment, this rule is not subject to the requirement to publish an initial or final regulatory flexibility analysis under the RFA as part of such action.

Unfunded Mandates Reform

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA)¹ requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year. If a budgetary impact statement is required, section 205 of UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.² However, the UMRA applies only to rules for which an agency publishes a general notice of proposed rulemaking. As discussed above, HUD has determined, for good cause, that prior notice and public comment is not required on this rule and, therefore, the UMRA does not apply to this final rule.

Executive Order 13132, Federalism

Executive Order 13132 (entitled “Federalism”) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This rule will not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Environmental Review

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation,

¹ 2 U.S.C. 1532.

² 2 U.S.C. 1534.

alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 7

Administrative practice and procedure, Equal employment opportunity, Organization and functions (Government agencies).

PART 7 — [REMOVED]

Accordingly, under 42 U.S.C. 3535(d) and as discussed in the preamble, the Department of Housing and Urban Development is amending 24 CFR by removing part 7.

Date: May 12, 2016

Nani A. Coloretti
Deputy Secretary

[FR-5645-F-01]

[FR Doc. 2016-11806 Filed: 5/18/2016 8:45 am; Publication Date: 5/19/2016]